IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 121 of 2000

in

SPECIAL CIVIL APPLICATION No 546 of 1995

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BALOLKHAN DOSKHAN JOYA

Versus

GEB

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Appearance:

MR BG JANI for Appellant

Mr.Mulia, for MR RC JANI for the Respondent.

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CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE P.B.MAJMUDAR

Date of decision: 09/01/2001

ORAL JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

1. This Letters Patent Appeal by the employee of the Gujarat Electricity Board has been preferred against the order of the learned single Judge dated 29.2.2000 passed in Special Civil Application No.546 of 1995, whereby the Award of reinstatement of the employee with 25% of back wages passed by the Labour Court on 15.10.1994 has been set aside.

2. Necessary facts giving rise to the appeal are as under :-

The respondent-Board, by an order issued on 30.7.1979, appointed the appellant on work charge establishment on the post of Helper and he joined the post on 6.8.1979. The appointment was for a period of 190 days and his services were terminated on 29.11.1979. The employee was then inducted as an Apprentice Lineman on 19.2.1981 and his services were informally terminated or discontinued on 27.11.1981 on the ground that the contract of apprenticeship sent to the Apprenticeship Adviser in accordance with Section 4(5) of the Apprentices Act, 1961 has not been registered. The employee then approached the Labour Court under the provisions of the Industrial Disputes Act, stating that the informal termination of his service is contrary to the provisions of the I.D. Act as he was not given any notice nor retrenchment compensation. The Labour Court, after recording the evidence of the parties, came to the conclusion that even though the contract of apprenticeship was not registered by the Apprenticeship Adviser, the employee would be deemed to be a `workman' within the definition of I.D. Act and in absence of observance of formalities required under the I.D. Act, termination of his service is illegal. The Labour Court, therefore, granted relief of reinstatement in service to the employee, but awarded only 25% back wages.

3. The employer then challenged the Award of the Labour Court in this Court under Article 227 of the Constitution of India. The learned single Judge allowed the writ petition of the employer and set aside the Award of the Labour Court. In the opinion of the learned single Judge, even though the contract of apprenticeship was not registered, because the employee was not fulfilling the prescribed educational qualification for being appointed as an apprentice, the status of such apprentice can be termed only as a `trainee'. Such a

person cannot be deemed to be a `workman', within the meaning of the I.D. Act. The reasoning of the learned single Judge is that to find out the nature of employment and the status of the employee, what is to be seen is the intention of the employer in giving employment as disclosed from the terms of the contract of the employment and the subsequent conduct of the parties.

4. In this Letters Patent Appeal, learned counsel appearing for the employee has mainly criticised the reasoning of the learned single Judge. It is submitted that the learned single Judge erred in holding that although the apprenticeship contract was not registered and the provisions of the Apprenticeship Act were not applicable, the employee cannot get protection from the provisions of the I.D. Act because his relationship with the employer would be only of an `apprentice' or `trainee' and not a `workman'. It is stated on behalf of the employee that being in service from 19.2.1981 to 27.11.1981, the employee has completed more than 240 days of uninterrupted service and, therefore, the provisions of Section 25-F of the Act were clearly breached to justify grant of relief of reinstatement to the workman by the Labour Court.

5. Learned counsel appearing on behalf of the employer-Board made an effort to support the order of the learned single Judge and relied on the decision of the Supreme Court in the case of The Employees' State Insurance Corporation and another v. The Tata Engineering & Co., AIR 1976 SC 66.

6. After hearing the learned counsel for the parties and perusing the judgment of the learned single Judge, we have formed opinion that this Appeal deserves to be allowed. It is not in dispute that the employee was given second opportunity to serve in the Board only by appointing him as an apprentice. After issuing the appointment order as an apprentice, the contract of apprenticeship was sent to the Apprenticeship Adviser. Section 3 of the Apprenticeship Act states that "a person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade unless he is fourteen years of age and satisfies such standards of education and physical fitness as may be prescribed." In the Apprenticeship Rules as per the Schedule appended to them, for appointment to the post of Lineman, the prescribed qualification is that the candidate must have passed 8th standard examination of the new course. The 8th standard examination of new course 10+2+3 is not equivalent to 8th standard

examination of old course. The apprenticeship contract was, therefore, not registered only on the ground that the 8th standard examination pass of the old course is not equivalent to 8th standard examination pass of the new course. Section 18 of the Apprenticeship Act states that "every apprentice undergoing apprenticeship training in a designated trade in an establishment shall be a trainee and not a worker and the provisions of any law with respect of labour shall not apply to or in relation to such apprentice". The provisions of Section 18, as held by the learned single Judge, are not attracted in the case of the present appellant, because, for want of registration of his apprenticeship contract, he cannot be treated to be an `apprentice' undergoing apprenticeship training. `Apprentice' has been defined under Section 2(aa) to mean "a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship."

7. The other question that arises is that if the provisions of Section 18 are not attracted to the employment of the appellant, as he was not undergoing an apprenticeship training pursuant to an apprenticeship contract, whether the provisions of other labour laws would be applicable to such employment. In the above respect, the learned single Judge has also noticed the definition of `workman' contained in Section 2(s) of the I.D.Act. The definition clause (s) of Section 2 of the I.D. Act expressly includes an `apprentice'. Section 2(s) reads as under :-

> "2. Definitions.-In this Act, unless there is anything repugnant in the subject or context,-
>
> ... ... ...
>
> (s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or

as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

(emphasis supplied)

The definition of `workman' in I.D. Act, as it stands, was introduced by amendment on 21.8.1984 and at that time the Apprenticeship Act, 1961, containing Section 18 in its provisions, was in existence. The Central Legislature was, therefore, fully alive to the situation that an apprentice, undergoing an apprenticeship training under an apprenticeship contract duly registered, would be only a `trainee' and not a `workman', to which other laws in respect of labour shall not apply. Therefore, in including, in the definition of `workman', `apprentice' as well, the legislative intention appears to be obvious that such apprentices, who are not undergoing apprenticeship training under a duly registered apprenticeship contract, envisaged by the Apprenticeship Act, and to whom provisions of Section 18 of the said Act are not applicable, would, nonetheless, be included in the definition of `workman' under the I.D. Act and would get all the protection of labour laws. The learned single Judge may be right in his reasoning that even after non-registration of the contact of apprenticeship, the appellant would only be a `trainee', or an

`apprentice', as intended by the parties and he would not be an `employee' or a `workman', within the meaning of the Apprenticeship Act. Even if, as stated by the learned single Judge, the appellant, as a result of non-registration of contract of apprenticeship, is deemed to be a `trainee' or an `apprentice', he would, nonetheless, be covered within the definition of `workman' under Section 2(s) of the I.D. Act.

8. In considering the claim of a workman for reinstatement against illegal termination of his services, it is not merely the label given to the employment which is decisive, but what is to be ascertained is the actual nature of work and contract of employment. The Labour Court, which recorded the evidence, has come to a finding of fact that, in the first phase of his employment, the appellant worked as helper on work charge basis and after his induction as Apprentice Lineman, he continued to work on the same post with the same duties. The learned counsel appearing on behalf of the Board argued that there is no difference between the nature of work of Lineman and Helper. It may be so, but status of an employee, appointed as a Lineman, with requisite qualifications and expertise, is different from employee, who is just helping him. The facts revealed before the Labour Court were that between the period 19.2.1981 and 27.11.1981, the appellant, virtually, served as Helper and not as an Apprentice. It is not in dispute that by service between 19.2.1981 to 27.11.1981 the employee had completed more than 240 days of continuous service. The provisions of Section 25-F require that the services of a workman, who has completed 240 days' continuous service, can be terminated only after service of one month's notice in writing or payment in lieu of notice and also only on payment of retrenchment compensation. Non-observance of mandatory condition precedent in Section 25-F of the I.D. Act makes the termination of service or retrenchment of the workman illegal.

9. In fact, this is an unfortunate case for the employee, because, after the Award of the Labour Court, by order issued, although late, on 1st November, 1999, the Board reinstated the appellant to the post of Helper on a sanctioned regular post. It is only after the learned single Judge set aside the Award of the Labour Court that the services of the employee have again been terminated on the success of the writ petition of the employer.

10. For the reasons stated by us above, the order of

the learned single Judge cannot be sustained. Consequently, we allow this appeal and set aside the judgment of the learned single Judge dated 29.2.2000. As a consequence thereof, the Award of the Labour Court, Kalol dated 15.10.1994 is restored. In the circumstances, we leave the parties to bear their own costs.

9th January, 2001 ( D.M. Dharmadhikari, C.J. )

( P.B. Majmudar, J. )

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(apj)